

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

FIVES GIDDINGS & LEWIS, LLC,)
Plaintiff,)
v.)
J&L HATFIELD, LLC, d/b/a RUSACH INT'L,)
Defendant.)
No. 1:23-cv-01797-JMS-MJD

REPORT AND RECOMMENDATION

This matter is before the Court on Plaintiff's Motion to Approve and Enter Agreed Judgment. [Dkt. 31.] On March 12, 2024, District Judge Jane Magnus-Stinson designated the undersigned Magistrate Judge to issue a report and recommendation regarding the disposition of the motion pursuant to [28 U.S.C. § 636\(b\)\(1\)\(B\)](#). [Dkt. 35.] The Undersigned held a telephonic hearing on the motion on March 13, 2024. For the reasons set forth below, the Magistrate Judge recommends that Plaintiff's motion be **GRANTED** and that Judge Magnus-Stinson enter judgment as agreed upon by the parties.

On January 26, 2024, the parties executed a settlement agreement which provided for a series of fifteen monthly payments by Defendant to Plaintiff which would total \$225,000.00. [Dkt. 31-1 at 2.] The payments were to begin on February 1, 2024, and be payable on the first of each month, with a five-day grace period. *Id.* The settlement agreement also contained the following provision:

[Plaintiff and Defendant] shall sign an Agreed Judgment in the form shown in Exhibit A for the judgment amount of \$350,000. Counsel for [Plaintiff] shall hold and not file the Agreed Judgment unless [Defendant] defaults in its payment obligations set forth in Section 1 above. Should [Defendant] default in any

obligation arising under this Agreement, counsel for [Defendant] may file the Agreed Judgment without further notice to [Defendant].

Id. at 3. Exhibit A was executed by counsel, with the consent of the parties, and attached to the settlement agreement. *Id.* at 7.

There is no dispute that Defendant did not make the first payment by the due date of February 1, 2024, or within the five-day grace period thereafter. As of the filing of the instant motion, at 8:00 a.m. on February 14, 2024, Plaintiff had not received the first payment. [Dkt. 31 at 3.]

In its response to the instant motion, Defendant reported that it made the first payment after the motion was filed. [Dkt. 32 at 1.]

Plaintiff's reply in support of the instant motion was due on March 4, 2024. In its reply, Plaintiff noted that Defendant had not yet made the second payment, but that the grace period had not yet expired. [Dkt. 33 at 1.] Plaintiff stated that if Defendant timely made the second payment, Plaintiff would withdraw the instant motion. *Id.* at 2. However, the second payment was not timely made. [Dkt. 34.]

Pursuant to the terms of the settlement agreement, Plaintiff is now entitled to have judgment entered in its favor in the amount of \$350,000.00, plus pre- and post-judgment interest at ten percent annum. Defendant readily conceded that fact during the telephonic hearing. The parties also agreed during the hearing that Defendant has been in default of the settlement agreement since February 7, 2024, and that only one payment has been made under the settlement agreement; that was a payment of \$15,000.00 on February 15, 2024. Accordingly, the Undersigned RECOMMENDS that Judge Magnus-Stinson GRANT the instant motion and enter judgment in favor of Plaintiff in the amount of \$350,000.00 along with the following: (1)

prejudgment interest in the amount of \$863.01 for the period of February 7, 2024, through February 15, 2024;¹ (2) additional prejudgment interest to be calculated in the amount of \$91.78 per day from February 16, 2024, to the date the judgment is entered;² and post-judgment interest at eight percent per annum. *See* Indiana Code 24-4.6-1-101 (limiting post-judgment interest rate to 8%).

Any objections to the Magistrate Judge's Report and Recommendation shall be filed with the Clerk in accordance with 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), and failure to timely file objections within fourteen days after service shall constitute a waiver of subsequent review absent a showing of good cause for such failure.

SO ORDERED.

Dated: 14 MAR 2024



Mark J. Dinsmore
United States Magistrate Judge
Southern District of Indiana

¹ This interest is payable on the entire \$350,000.00 judgment, calculated as follows: \$350,000 X 0.10 = \$35,000 / 365 days = \$95.89/day X 9 days = \$863.01.

² This interest is payable on \$335,000.00, which is the amount of the judgment minus the \$15,000.00 payment that was made on February 15, 2024, calculated as follows: \$335,000 X 0.10 = \$33,500 / 365 days = \$91.78/day X (the number of days from February 16, 2024 through the date of the judgment).